

U.S. Department of Labor

Employment Standards Administration
Office of Workers' Compensation Programs
Division of Energy Employees Occupational
Illness Compensation
Washington, D.C. 20210



OCT 25 2010

Mr. Gary S. Vander Boegh
Commonwealth Environmental Services, LLC
4645 Village Square Drive, Suite F
Paducah, Kentucky 42001

RECEIVED
11.2.10

Manda G. Stevens

Dear Mr. Vander Boegh:

This is in response to your October 8, 2010 letter to Secretary of Labor Hilda L. Solis, copied to President Barack Obama. You wrote in your capacity as the authorized representative for Ms. Nettie M. Todd (formerly Maxine N. Todd in our records) regarding her claim for survivor benefits filed under Part B and Part E of the Energy Employees Occupational Illness Compensation Program Act (EEOICPA) as the surviving spouse of James M. Todd. Your letter was forwarded to me for response.

Your letter included several attachments which you identify as "statutory compliance evidence" for Ms. Todd's claim; this information has been forwarded to the Jacksonville district office for review. In your correspondence, you allege that the Division of Energy Employees Occupational Illness Compensation (DEEOIC) has "arbitrarily and capriciously" delayed the processing of Ms. Todd's claim for Part B compensation for chronic beryllium disease (CBD) and refused to process the claim.

In reviewing the record, I note that Ms. Todd filed her claim for CBD on July 9, 2010. On July 16, 2010, a letter was sent to you, with a copy to Ms. Todd, discussing program requirements for CBD and requesting additional medical records to support the claim. In this letter, the Jacksonville district office explained that the chest x-rays in the file from 1985 would need to be evaluated by a District Medical Consultant (DMC) to determine if they met the first criteria, i.e., "characteristic chest x-ray or CT abnormalities" as accepted under the EEOICPA. In that letter, you were asked to submit, if possible, any additional medical records for the employee identifying a lung condition prior to 1993; the district office requested that the information be received by August 16, 2010 in order to expedite the claim. On July 20, 2010, the Jacksonville District Director sent you a letter to confirm that the claimed condition of CBD had been added to the list of medical conditions claimed and, along with other claimed conditions, was being actively developed.

On August 16, 2010, the Jacksonville district office sent you a second request for information and extended its deadline for "any additional medical records for the employee identifying a lung condition prior to 1993" to September 16, 2010. On August 16, 2010, you also received a second request related to your June 16, 2010 request for reopening of Ms. Todd's claim; in this letter, the Jacksonville district office requested that you provide copies of the employment evidence for the 1970s that you had indicated was available. Our records show that on August 24, 2010, the district office received a letter from you indicating that you would not provide any further documentation with regard to Ms. Todd's Part B and Part E claim for compensation.

On September 20, 2010, a Denial of Reopening was issued for Ms. Todd's Part E claim for prostate cancer, chronic obstructive pulmonary disease, Kaposi's sarcoma, and Parkinson's disease. In the cover letter accompanying this denial, the Jacksonville District Director noted that Ms. Todd's claim for CBD was (still) being developed under Part B and Part E.

On October 4, 2010, the Site Exposure Matrices (SEM) database was reviewed for a toxic substance relationship to CBD. SEM identified beryllium as associated with CBD for construction laborers at the Paducah Gaseous Diffusion Plant. On October 4, 2010, the district office forwarded the case to a DMC for review of Mr. Todd's medical records to determine if the employee's chest x-rays could be classified as a "characteristic chest x-ray of CBD" and if his CBD or other chronic pulmonary diseases contributed to his death. The claim is now at the Jacksonville district office for further development. If you have any questions, or if you have additional medical evidence for CBD that you wish to submit, please contact the Jacksonville district office toll-free at (877) 336-4272. From my review of the record, it appears that appropriate and timely development steps have been taken by the district office on Ms. Todd's CBD claim.

Your letter also indicates that you have a list of Commonwealth Environmental Services LLC (CES) clients that have "clearly met/established their compliance with the CBD statutory requirements, but to date have received nothing" under EEOICPA. If you have questions related to any claim under the EEOICPA, please provide the claimants' name and your specific question to the district office that is handling the claim and the district office will respond to your inquiry. In previous letters dated January 29, 2010, August 27, 2010, and October 20, 2010, I provided instructions to you on how to appropriately and securely submit inquiries to the DEEOIC district office or Final Adjudication Branch, rather than to multiple personnel within the Department of Labor, so that your request(s) can be quickly

and effectively addressed. I advised that if you had any questions regarding this process, you could call me at (202) 693-0081.

Although you allege that DEEOIC employees are violating the law and attempting to "damage CES by withholding claimants' statutory entitlements and medical benefits," I assure you this is not the case. EEOICPA claims are reviewed and adjudicated on a case-by-case basis, according to the merits of each case, with no weight given to whether there is an authorized representative assigned or not assigned to the case. The DEEOIC has strict guidelines, procedures, and policies we must adhere to when adjudicating all claims and the mission of fairly and efficiently adjudicating all claims filed under the EEOICPA.

Sincerely,

A handwritten signature in cursive script that reads "Rachel P. Leiton".

Rachel P. Leiton
Director, Division of Energy Employees
Occupational Illness Compensation